

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

Re: Casella Waste Management, Inc.
Declaratory Ruling #244

MEMORANDUM OF DECISION

This decision, dated September 6, 1991, pertains to a Motion to Deny Untimely Submission of Evidence by Casella Waste Management, Inc. and a Motion for a Directed Verdict filed by the Petitioner Marcia Weeks, and a request for postponement of the hearing scheduled for September 11 filed by Casella Waste Management, Inc.

Background

On March 11, 1991, a Petition for a Declaratory Ruling was filed by Marcia Weeks concerning whether the recycling center owned and operated by Casella in **Rutland** Center is subject to Act 250 jurisdiction. A prehearing conference was convened on June 26, following which a prehearing conference report and order was issued by the Acting Chair, Ferdinand Bongartz. This order establishes the date of September 11 for a hearing and requires the filing of final lists of witnesses and exhibits and prefiled testimony for **"all** direct witnesses to be presented at the hearing" by August 21 and prefiled **testimony for** any rebuttal witnesses by September 5. The order states:

4. No individual may be called as a witness in this matter if he or she has not been identified in a witness list filed in compliance with this order. ... If prefiled testimony has not been submitted by the date specified, the witness will not be permitted to testify.

5. The Board may waive the filing requirements upon a showing of good cause, unless such waiver would unfairly prejudice the rights of other parties.

Casella did not file a list of witnesses and exhibits or prefiled testimony by August 21. On August 26 the Petitioner filed the motion to deny untimely submission of evidence and! the motion **for directed** verdict. On September 3, the Board received **Casella's** Memorandum in Opposition to the Petitioner's motions. Casella argues, **essentially**, that there was miscommunication between Mr. Casella and his attorney, and each one thought the other was handling the submission of prefiled testimony to the Board. Casella further argues that no prejudice would result to the

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Petitioner **and** it would be in the best interests of the public if the Board were to reschedule the hearing and allow Casella additional time to submit evidence.

Decision

The Board has decided to deny the motion for a directed verdict and to grant the motion to deny the untimely submission of evidence by Casella. The Board has also decided not to postpone the hearing scheduled for September 11.

The dates for the hearing and the prefiling of testimony were established at the prehearing conference with the concurrence of the parties. The Board's prehearing order dated July 23, 1991 clearly sets out the filing dates and states that the filing requirements must be complied with, unless good cause for noncompliance is shown and prejudice to the rights of the other parties would not result.

The Board believes that good cause has not been shown for noncompliance with the filing dates. Casella will therefore be required to comply with the provision of the order that prohibits the presentation of witnesses if prefiled **testimony** has not been filed by the date specified. However, Casella still has the right to cross-examine the Petitioner's witnesses. Therefore, the hearing will go forward as scheduled.

With regard to **Casella's** argument that the rights of the Petitioner will not be prejudiced by rescheduling the hearing, the Board notes that the next available hearing date is not until January, 1992, and that Casella is continuing to operate the **recycling** facility during the **pendency** of this proceeding. It is both in the public interest and in the interest of the Petitioner to have the question of whether an Act 250 permit is required for this facility resolved without further delay.

Order

1. The Petitioner's Motion to **Deny Untimely Submission of Evidence** by Casella is granted.
2. The Petitioner's Motion for a **Directed Verdict** is denied.

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3. **Casella's** request for rescheduling of the hearing is denied.

Dated at Montpelier, Vermont this 6th day of September, 1991;.

ENVIRONMENTAL BOARD

Stephanie Kaplan for
Ferdinand Bongartz, **Acting** Chair
Lixi Fortna
Arthur Gibb
Samuel Lloyd
William Martinez
Steve E. Wright

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